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No. 90-842

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

AIR WISCONSIN PILOTS PROTECTION COMMITTEE, JAMES M. FENSKE, GARY M. PELACH, RICHARD J. MAGIERA, and THOMAS K. BLY,
Petitioners,

v.

CLIFFORD R. SANDERSON, Trustee and Acting Chairman of AIR WISCONSIN MASTER EXECUTIVE COUNCIL, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, WILLIAM P. HALE, Trustee, and DENNIS HIGGINS, Trustee,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly rejected petitioners' claims that their union violated the duty of fair representation, the union's Constitution and By-Laws, and the Landrum-Griffin Act by refusing to permit petitioners to nullify an arbitration award regarding pilot seniority in an airline merger which award must be treated as final and binding under longstanding union policy.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, dated July 30, 1990, is reprinted in Petitioners' Supplemental Appendix ("P.S.A.") at 1a. The unreported memorandum opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division, is reprinted in Petitioners' Appendix ("P.A.") at 4a.

STATEMENT OF THE CASE

The facts are succinctly and accurately set forth in the opinion of Circuit Judge Posner for the court of appeals below, to which the Court is respectfully referred. (P.S.A. 2a-4a). In brief summary, following the merger of two airlines, Air Wisconsin, Inc. ("Air Wisconsin") and Mississippi Valley Airlines, Inc. ("MVA"), a dispute arose between the pilot groups of the two pre-merger airlines over how to merge the two pilot seniority lists. Both of the pre-merger pilot groups were represented by respondent Air Line Pilots Association, International ("ALPA"); ALPA also represented the combined pilot group employed by Air Wisconsin after the merger. Pursuant to a long established set of ALPA guidelines known as ALPA Merger Policy, the pre-merger pilot groups submitted their seniority dispute to a neutral arbitration panel, and the arbitration panel issued an award merging the two pre-merger seniority lists in October, 1985. ALPA Merger Policy provides that such awards "shall be final and binding on all parties to the arbitration and shall be defended by ALPA." (P.S.A. 2a).

Petitioners are a group of pre-merger Air Wisconsin pilots who seek to displace the pre-merger MVA pilots from the seniority rights they obtained under the arbitration award. In October, 1986, dissatisfied with the arbitration award that ALPA was committed to defend under its Merger Policy, petitioners undertook to change the award through actions of the Air Wisconsin Master Executive Council ("MEC"), the administrative body within ALPA that coordinates ALPA's representation of the Air Wisconsin pilots. An MEC is a subordinate body of ALPA, elected by the pilots of an airline for which ALPA is the collective bargaining representative under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* An MEC's powers are defined and limited by ALPA's Con-

stitution and By-Laws. In particular, an MEC is forbidden to "initiate any action that is inconsistent with [ALPA's] Constitution and By-Laws or with the best interests of [ALPA] or the general membership." (P.S.A. 3a).

Disregarding this prohibition and ALPA Merger Policy, the Air Wisconsin MEC, dominated by petitioners, sent to all Air Wisconsin pilots a secret ballot proposal to change the merged seniority list created by the arbitration award to a seniority list based solely on a pilot's date of hire with his pre-merger airline. The proposal would allow the pre-merger Air Wisconsin pilots, who constituted a majority of the post-merger pilot group, to diregard ALPA Merger Policy, to nullify the arbitration award, and to impair the seniority of the smaller group of pre-merger MVA pilots. The cover letter stated that the proposal would "pass" if "ratified" by a majority of ballots. Upon learning of this and related attempts to undermine ALPA policy, ALPA placed the Air Wisconsin MEC in trusteeship after due notice and hearing. In this lawsuit, petitioners claimed that, by refusing to revise the arbitrated seniority list, ALPA breached its duty of fair representation to them, violated ALPA's Constitution and By-Laws and policies, and violated the provisions of the Landrum-Griffin Act, 29 U.S.C. § 401 *et seq.*, governing trusteeships and the free speech and voting rights of union members.

In a memorandum opinion and order dated May 26, 1989, following submission of memoranda of law, affidavits and oral argument by the parties, the district court granted respondents' motion for summary judgment in its entirety. (P.A. 4a-20a). The United States Court of Appeals for the Seventh Circuit unanimously affirmed the district court's decision in an opinion written by Judge Posner. The Seventh Circuit held that ALPA satisfied its duty to "represent *all* members of the [Air Wisconsin pilot] group fairly, that is, without favori-

tism, prejudice or other discrimination . . . by establishing, long before the case arose, a fair *process* for determining seniority in an airline resulting from a merger." (P.S.A. 4a). A critical component of that fair process, the Seventh Circuit explained, is ALPA's established policy that "such arbitrations should be final and binding and its corollary that ALPA shall be obliged to defend them." (*Id.*) That policy of finality "serves important social purposes and we certainly cannot pronounce ALPA unfair for giving the arbitrators' determination of seniority as much finality as it has done." (P.S.A. 5a).

With respect to the claim that petitioners were contractually entitled to date of hire seniority under ALPA's Constitution and policy statements, the court of appeals held that the arguments, "that seem in any event to have no merit," were barred on two grounds, "each dispositive." (P.S.A. 9a). First, the well-established "principle that a union's interpretation of its own constitution, bylaws, and other promulgations is entitled to judicial deference [unless] unreasonable" barred petitioners' claim because "[t]here is no way in which ALPA's interpretation of the provisions bearing on the merger of seniority lists could be thought unreasonable." (P.S.A. 9a). Second, petitioners' claim was a time-barred collateral attack on the arbitration award. (*Id.*).

Finally, the court of appeals affirmed the dismissal of petitioners' Landrum-Griffin Act claims. Noting that Congress specifically subordinated union members' free speech rights to "reasonable [union] rules," 29 U.S.C. § 411(a)(2), the Seventh Circuit held that by asking the Air Wisconsin pilots to vote to change the arbitrated senority list in direct contravention of established ALPA policy, petitioners "used their [union] offices to subvert the policies and commitments of the union and by thus undermining the union by deed and not just by word they passed out of the protective field of Landrum-Griffin's free-speech clause even as broadly defined in [*Sheet Metal Workers' Int'l Ass'n* v. *Lynn*, 109 S.Ct. 639

(1989)]." (P.S.A. 10a-11a). The court further held that "what we have said answers the remaining contentions, that the trusteeship was imposed for an improper, retaliatory purpose and that it abridged the union members' right to vote." The court also rejected petitioners' additional contentions regarding procedural details of the trusteeship because "they have no possible merit." (P.S.A. 11a).

REASONS WHY THE WRIT SHOULD BE DENIED

THIS CASE DOES NOT PRESENT ANY CONFLICT AMONG THE CIRCUITS, DOES NOT RAISE ANY SIGNIFICANT ISSUE CONCERNING THE ADMINISTRATION OF FEDERAL LABOR LAW, AND WAS CORRECTLY DECIDED BELOW

Petitioners apparently argue that this case warrants this Court's review because it presents a conflict among the circuits concerning the duty of fair representation and important issues of law concerning (1) the contractual status of a union constitution and (2) the administration of the Landrum-Griffin Act. In fact, this case involves the routine application of settled principles of federal labor law to undisputed material facts and was manifestly decided correctly in Judge Posner's opinion for the Seventh Circuit.[1] We discuss each of petitioners' arguments below.

1. Petitioners argue that the court of appeals used a restrictive "intentional misconduct" standard which "proved to be lethal" to their duty of fair representation

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[1] Petitioners also shrilly contend that there were disputed issues of material fact which should have precluded summary judgment. The district court, however, held that petitioners "have failed to provide any facts to support the existence of a genuine issue of material fact necessary for trial." (P.A. 20a). The court of appeals, on *de novo* review, affirmed. (P.S.A. 11a). Those holdings are clearly correct and do not present an issue warranting Supreme Court review.

claim, in alleged conflict with the treatment they aver they would have received in other circuits or under the standard set forth by this Court in *Vaca* v. *Sipes*, 386 U.S. 171 (1967) (Pet. at 38-39). This claim is frivolous. Nothing in this case turned upon an "intentional misconduct" formulation of the duty of fair representation standard. To the contrary, both the district court (*see* P.A. 10a) and the court of appeals referenced and employed the fair representation standard articulated in *Vaca* and *Steele* v. *Louisville & N. R.R.*, 323 U.S. 192 (1944). Thus, the Seventh Circuit held:

> A union empowered by federal law to be the exclusive representative of a group of workers for purposes of bargaining with their employer over wages and over terms and conditions of employment has a correlative duty, fiduciary in character, to represent *all* members of the group fairly, that is, without favoritism, prejudice, or other discrimination. *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967). *ALPA satisfied that duty in this case*, however, by establishing, long before the case arose, a fair *process* for determining seniority in an airline resulting from a merger.

(P.S.A. 4a (emphasis added); *see also* P.S.A. 6a-7a).[2]

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[2] The court of appeals also held that a vital part of ALPA's fair process is the policy that the arbitration awards shall be final and binding and shall be defended by ALPA:

> That the system ALPA has created places a good deal of power in the hand of arbitrators is not a sign of "unfairness" in the limited sense relevant to evaluating claims of breach of the duty of fair representation, especially since the alternative would be to encourage continuing and acrimonious disputes among workers by opening seniority to continual revision. It is not in the interest of organized labor to incite workers to fight among themselves over job rights. Nor is it in the workers' own interest, behind the veil of ignorance, that is, before they know whether they have been the winner or loser of the arbitration. Here as elsewhere finality serves important social purposes and we certainly cannot pronounce ALPA unfair for

Accordingly, this case does not raise any intercircuit conflict concerning the duty of fair representation that warrants this Court's review.

2. The district court and the court of appeals rejected petitioners' claim that general preamble-like language in ALPA's Constitution and By-Laws and other policy statements must be read to nullify ALPA Merger Policy and to "contractually" guarantee petitioners date of hire seniority in all mergers. In doing so, the district court and the court of appeals deferred to the interpretation of those documents by ALPA's highest governing bodies (empowered by ALPA's Constitution to interpret the Constitution and establish policy) because, the courts held, the union's interpretation was clearly "reasonable." (P.S.A. 8a-9a; P.A. 12a-13a).[3] Petitioners now argue that such federal judicial deference to a union's reasonable interpretation of its own constitution and other promulgations was improper, and that their "contractual" claims should have been evaluated by "applying the rules of contract interpretation that would apply to any other breach of contract action," such as a commercial contract, or even an "insurance policy." (Pet. 50-59). This argu-

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giving the arbitrators' determination of seniority as much finality as it has done.

(P.S.A. 5a). Accordingly, petitioners' ill-defined argument (*see* Pet. at 30-37) that ALPA breached its collective bargaining duty by not revising the arbitrated seniority list in subsequent collective bargaining with Air Wisconsin management, an argument that finds no support in the cases cited (or any other cases), is clearly without merit and provides no reason to grant the writ.

[3] In evaluating the reasonableness of ALPA's interpretation of its Constitution and policy statements, the courts below reviewed petitioners' "contractual" claims (based solely upon general "preambular" language inapplicable to merger situations that could not possibly override the specific language of ALPA Merger Policy regarding merger of seniority lists in an airline merger) and found petitioners' claims "in any event to have no merit." (P.S.A. 8a-9a; P.A. 12a-13a).

ment is also patently meritless and is unsupported by any authority that petitioners adduce (or could adduce).[4] While petitioners cite *United Ass'n of Journeymen* v. *Local 334, United Ass'n of Journeymen*, 452 U.S. 615 (1981), for their contract interpretation claim, even they admit that *Journeymen* specifically declined to rule on what substantive law should apply in actions to enforce union constitutions as "contracts between . . . labor organizations" under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). *Journeymen*, 452 U.S. at 627. (*See* Pet. at 51).[5] Both before and after *Journeymen*, the circuits have uniformly held that:

> a union's interpretation of its own constitution, bylaws, and other promulgations is entitled to judicial deference; we must be able to call the interpretation unreasonable, perhaps even "patently unreasonable," before we can set it aside. *Local Union No. 657* v. *Sidell*, 552 F.2d 1250, 1257 (7th Cir. 1977); *Mill-*

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[4] As the court of appeals below held, petitioners' "contractual" claims are also independently barred by, *inter alia*, the six-month limitations period applicable to their collateral attack on the arbitration award. (P.S.A. 9a). Thus, the decision below is correct without regard to the "contractual interpretation" question sought to be raised in the petition.

[5] Petitioners misread *Journeymen* in claiming that "this Court has held that union members may have enforceable contract rights against the union itself arising from the union constitution and related documents." (Pet. at 50). *Journeymen* was an action between two affiliated labor organizations, and this Court specifically did "not decide whether individual members may bring suit on a union constitution against a labor organization." *Journeymen*, 452 U.S. at 627 n.16. Moreover, *Journeymen* and the other cases cited by petitioners arose under Section 301(a) of the Labor Management Relations Act, not the Railway Labor Act, as in this case. The Railway Labor Act does not have a provision equivalent to Section 301(a). Because petitioners presented their "contractual" entitlement argument as part of their duty of fair representation claim (*see* P.A. 11a-13a), the courts below were not presented with the issue and did not rule upon whether an individual union member may bring a breach of contract action grounded on a union constitution against the union under the Railway Labor Act.

> *wright Local No. 1079* v. *United Brotherhood of Carpenters & Joiners*, 878 F.2d 960, 962 (6th Cir. 1989); *Loretangeli* v. *Critelli*, 853 F.2d 186, 192 (3d Cir. 1988); *Newell* v. *International Brotherhood of Electrical Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986). The reason is to protect the internal affairs of unions from heavy-handed judicial interference, and is consistent with what has become in the last century a settled though not total aversion to federal judicial intervention in labor relations. *Gustafson* v. *American Train Dispatchers' Ass'n*, 788 F.2d 1284, 1287 (7th Cir. 1986)..

(P.S.A. 9a). *See also Association of Contracting Plumbers* v. *Local Union 2, United Ass'n of Journeymen*, 676 F.Supp. 523, 529-30 (S.D.N.Y.), *aff'd*, 841 F.2d 461, 468 (2d Cir. 1988). Petitioners offer no reason why the Court should overturn this settled standard for reviewing a union's interpretation of its own Constitution and By-Laws. Accordingly, Judge Posner's treatment of petitioners' alleged "contract" claim under ALPA's Constitution and By-Laws does not warrant this Court's review.

3. Petitioners finally contend that, contrary to the Seventh Circuit's holding, the Landrum-Griffin Act, as interpreted in *Sheet Metal Workers' Int'l Ass'n* v. *Lynn*, 109 S.Ct. 639 (1989), entitles union officials to circulate a ballot designed to nullify and violate ALPA's Merger Policy. This claim, too, is baseless. As noted above, the court of appeals (and the district court) expressly considered *Lynn*, and the decision below is consistent with *Lynn* in every respect. (*See* P.S.A. 9a-11a; P.A. 17a-18a). Section 101(a)(2), the free speech provision of the Landrum-Griffin Act, subjects the right of "[e]very member of any labor organization . . . to express any views, arguments, or opinions" to "reasonable [union] rules." Specifically, that section provides that:

> nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reason-

> able rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 411(a)(2). As the court of appeals below held, the "reasonable rules" statutory proviso requires rejection of petitioners' free speech claim under the Landrum-Griffin Act:

> The quoted language might have been written with these plaintiffs in mind. They used their positions as officers of the Air Wisconsin Master Executive Council to interfere with ALPA's performance of its duty of collective bargaining on behalf of the airline's pilots and to undermine ALPA's contractual commitment (made in the policy statement on mergers) to defend the arbitrators' award. The Council is not the collective bargaining representative and has no authority either to adopt or even to bargain for the adoption of a new seniority list. The plaintiffs are free to express their views, as vociferously as they care to do, concerning the seniority list, without thereby forfeiting positions to which they have been elected, *Sheet Metal Workers' Int'l Ass'n* v. *Lynn*, 109 S.Ct. 643 (1989); but they are not entitled to continue to exercise a trust that they have abused. In asking Air Wisconsin's pilots to vote on a matter confided to another body (ALPA), the plaintiffs used their offices to subvert the policies and commitments of the union, and by thus undermining the union by deed and not just by word they passed out of the protective field of Landrum-Griffin's free-speech clause even as broadly defined in *Lynn*.

(P.S.A. 10a-11a). Thus, the facts in this case are completely unlike those in *Lynn*;[6] as the court of appeals

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[6] In *Lynn*, an elected local business representative was improperly removed by the union merely for exercising his own right as a union member of speaking against a proposed dues increase at a union meeting.

below correctly held, ALPA's actions were clearly lawful under the Landrum-Griffin Act.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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